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February 16, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Rainbow Broadcasting Company
Station WRBW(TV)
Orlando, Florida
GC Docket No. 95-172

Dear Mr. Caton:

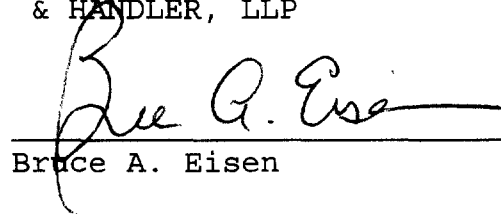
On behalf of Rainbow Broadcasting Company, there is transmitted herewith an original and six (6) copies of its Opposition to Petition for Order Requiring the Unwinding of the Assignment of the Construction Permit of Station WRBW(TV).

Should any questions arise with regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER, LLP

By:


Bruce A. Eisen

Enclosure

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File Nos. BMPCT-910625KP
)	BMPCT-910125KE
For Extension of Time to Construct)	BTCCT-911129KT
)	
and)	
)	
For Assignment of Construction Permit)	
for Station WRBW(TV))	
Orlando, Florida)	
)	

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TO: The Honorable Joseph Chachkin
Administrative Law Judge

**OPPOSITION TO PETITION FOR ORDER REQUIRING
THE UNWINDING OF THE ASSIGNMENT OF THE
CONSTRUCTION PERMIT OF STATION WRBW(TV)**

Rainbow Broadcasting Company ("RBC"), by its attorneys, hereby opposes the Press Broadcasting Company, Inc. ("Press") Petition for Order Requiring the Unwinding of the Assignment of the Construction Permit of Station WRBW(TV). In support thereof, the following is shown:

1. Press wants the Judge to rule that the current permittee of Station WRBW(TV) is RBC, and not Rainbow Broadcasting, Limited ("RBL"), the assignee approved by the Commission in its Memorandum Opinion and Order, 9 FCC Rcd 2839 (1994) ("Order"). It asks the Presiding Judge to unwind the assignment of the captioned construction permit, pending resolution of the issues specified in the Commission's Memorandum Opinion

and Hearing Designation Order, 61 Fed. Reg. 34282 (January 31, 1996) (“HDO”). Press’ petition should be denied.

2. The HDO acknowledged that “Rainbow” was currently providing service pursuant to program test authority and that a disruption of such service pending the outcome of the hearing would not serve the public interest. The Commission further noted that the court had remanded the case without vacating the Commission’s earlier Order which had, inter alia, granted an application for the pro forma assignment of the WRBW(TV) construction permit to RBL. For these reasons, the Commission expressly ordered that its prior decision remain in effect so that “Rainbow may continue to operate until the hearing is concluded and all issues are finally resolved.” HDO, par. 6. Despite Press’ argument, the Commission had to have considered RBL as the permittee. Otherwise, its order to preserve the status quo would have been nullified.

3. The Presiding Judge and the parties to this proceeding are, by necessity, dealing with a legally contrived set of facts in order to allow for the full exploration of the specified issues while keeping Channel 65 on the air. That is not extraordinary, nor does it justify the relief Press seeks. Cf. 1400 Corp. 4 FCC 2d 715 (1966); Cleveland Board of Education, 87 FCC 2d 9, 10 (1981); Bronco Broadcasting Co., Inc., 50 FCC 2d 529, 536 (1974); Arthur A. Cirilli, Trustee in Bankruptcy, 2 FCC 2d 692, 693 (1966) (In tripartite situations involving renewal hearings, Commission finds that the public interest is better served by comparing qualifications of prospective assignee and mutually exclusive construction permit applicant). Hence, in the past the Commission has used legal fictions in cases involving license renewals.

4. While the status quo continues, the Commission has ordered inquiry into issues relating to matters that preceded the grant of the pro forma assignment of license. During the pendency of these issues, the HDO has conferred upon RBL the right to operate the station pursuant to the Commission's prior Order. On the other hand, RBC has been charged with the burden of proceeding and the introduction of evidence. That is not an earth shattering concept, nor is it one that promises to complicate or disrupt this hearing.

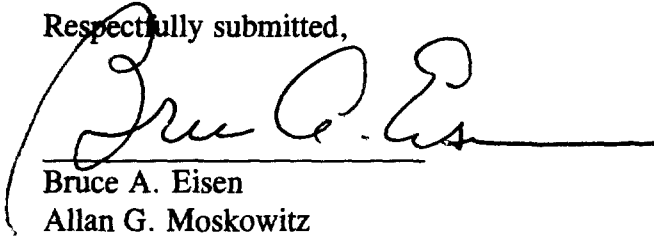
5. Press' argument also lacks merit because the Presiding Judge is without authority to unwind the subject transaction. Surely he is not empowered to enter an order which would be tantamount to granting partial reconsideration of the HDO which ordered the preservation of the status quo established at a point in time after the Commission had granted the assignment application. None of the issues in this proceeding contemplate an unwinding, so it would be error for the Judge to grant the petition. Cf., Deep South Broadcasting Co. v. FCC, 120 U.S. App. D.C. 365, 347 F. 2d 459 (1965). Press should not now be allowed to question the efficacy of a transaction which the Commission considered in the HDO and decided to maintain throughout this proceeding. See, Atlantic Broadcasting Co., 5 FCC 2d 717, 720-721 (1966).

6. In point of fact, the Presiding Judge amply clarified matters at the January 30, 1996 conference. He recognized the need to maintain the status quo, but also acknowledged that an appearance had to be entered on behalf of Rainbow Broadcasting Company, the entity "for the purpose of this hearing" (Tr. 16). He also noted that in order to retain the status quo, the assignment had not taken place "for purposes of this hearing" (Tr. 18). That in no way results in a conclusion that the assignment should be unwound and,

indeed, RBC has entered its notice of appearance as requested. A contrary conclusion could end the status quo since the permittee would no longer be able to rely upon its present passive investors for the continued operation of Station WRBW(TV).

In light of the foregoing, Press' Petition should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce A. Eisen", is written over a horizontal line.

Bruce A. Eisen
Allan G. Moskowitz
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Counsel for Rainbow Broadcasting Company

February 16, 1996

CERTIFICATE OF SERVICE

I, Linda Walker, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that I have on this 16th day of February, 1996, caused the foregoing "Opposition to Petition for Order Requiring the Unwinding of the Assignment of the Construction Permit of Station WRBW(TV)" to be mailed by First Class U.S. Mail, to the following:

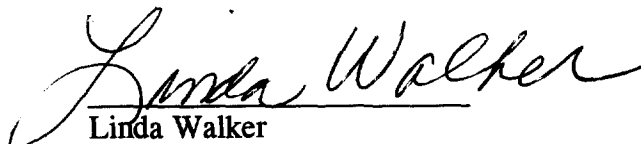
Honorable Joseph Chachkin *
Administrative Law Judge
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Linda Walker

*** VIA HAND**